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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 196 .

No. 1029

MAJOR OIL DEVELOPMENT COMPANY, and MR. CHARLES A. MEEKER,
Petitioners,

vs.

UNITED STATES OF AMERICA and SECURITIES AND EXCHANGE COMMISSION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT, DENVER, COLORADO

MR. CHARLES A. MEEKER,
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General Counsel for the
Securities and Exchange Commission,
Washington (25), D.C.,
Counsel for the Respondents.

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PETITION FOR A WRIT OF CERTIORARI

The Major Oil Development Co., and Mr. Charles A. Meeker pray that this Honorable Court issue a writ of certiorari to review a final order of the United States Tenth Circuit Court of Appeals, dated April 27, 1963, dismissing a petition for a Declaratory Judgment and review of administrative agency conduct.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is based on 28 U.S.C., Sections 1254 (1), and 2201.

The jurisdiction in the Tenth Circuit Court of Appeals is based on 28 U.S.C., Section 2201; Title 5, F.C.A., Section 1009 (f-a and c), and Sections 1032 and 1033; and the Securities Act of 1933, Public 22—73rd Congress, H.R. 5480.

No Conclusions of Fact or Law, or Opinion was rendered by the Court below although this was requested by the Petitioners.

QUESTIONS THAT ARE PRESENTED FOR REVIEW

(1) May a United States Administrative Agency refuse to formally answer questions in a form considered a final administrative ruling; thus making it impossible to bring an appeal from the Agency's oral rulings, and which final result is basically a fraud to maintain dominance in ways not intended by the statutes of the United States?

(2) May the Tenth Circuit Court of Appeals by its refusal to review the conduct of said agency, confirm and make final this fraud and the taking of property and business rights without due process of law, without violating its discretionary powers?

CONSTITUTIONAL RIGHTS AND STATUTES INVOKED

United States Constitution, Fifth Amendment thereto;
Title 28, U.S.C., Sections 1254 (1), and 2201;
Title 5, F.C.A., Sections 1009 (1), 1032, and 1033;
Securities Act of 1933, Title (I), Sections 3-a (11), and 4 (1).

STATEMENT OF THE CASE

The Petitioners are mineral property owners of substantial amounts, and at times both need to dispose of some of these interests to various parties who wish to buy same. Mr. Charles A. Meeker and his wife and children own the Major Oil Development Co.

Under the Securities Act of 1933, Title (I), Sections 3-a (11), and 4 (1), the Congress of the United States permit certain sales of these mineral interests without conforming with the enormous amount of "red-tape" generally required of those making such sales. Currently there exists very great confusion in the law concerning the intent of Congress as relating to these exempt securities and transactions. The full extent of this confusion and great need for a clarification is clearly shown in the following two law review articles: 15 Wyoming L.R. P-121 to 132; 107 University of Pa. L.R. P-937 to 964.

As a result of this confusion, and the further fact that the Securities and Exchange Commission do all in their power to maintain the chaos, it is very dangerous to make any type of mineral interest sale. There is little telling just what type of ridiculous ruling the S.E.C. will make or what frauds and abuses of process will be resorted to, or what embarrassments they may maliciously cause innocent victims.

To accomplish the above the S.E.C. will make whispered threats of getting temporary injunctions they know are unfounded making false and malicious releases to local newspapers, and in general cause these victims all the trouble possible if they fail to conform to the illegal demands of S.E.C. They demand that a signed affidavit be given them and try to get inclusions in it they know are

false to be used later as a club. The entire procedure is a sham, a farce, and below the dignity and fair play that one should expect in dealing with his Government. (Tr. 5, pages 1 to 12)

For the purpose of trying to stop this class of conduct, and in particular to try and discover just what Congress did actually mean in Sections 3-a (11), and 4(1), the Petitioners asked the S.E.C. to make interpretative rulings. They were very free with such rulings so long as they were oral and in a form on which they knew it was impossible for a victim to challenge, but the S.E.C. absolutely refused to make any final ruling in writing which could be used as a final administrative ruling on which an appeal could be based. (Tr. 2 including enclosures "A" and "B", attached thereto)

From a practical aspect, the Petitioners did exhaust all possible legal means to obtain from the S.E.C. a final ruling from which an appeal could be taken. The fact that it has not been rendered by S.E.C. is entirely of their own choosing and is in no way the fault of either Petitioner. In fact for a period covering almost two years the Petitioners constantly tried to get S.E.C. to make rulings in writing and to hold the needed hearing which would result in a final S.E.C. ruling. It is however believed that under the law, Title 5, F.C.A., Sections 1009, 1032, and 1033, that the Petitioners were entitled to bring the appeal without the final ruling generally appealed on. There is only one case in the United States at point and this was by the Supreme Court of Washington State (127 P.2d 685, Note 8), and it would appear that the issue is *res-nova* on a Federal level.

By a Declaratory Judgment, the Petitioners sought from the Tenth Circuit answers to 18 questions. (Tr. 2, all pages) Every one of these questions are of great importance to the Petitioners' business, none are moot or of no

importance, and the S.E.C. admitted to having been told this. (Tr. 5, pages 1 to 12). The Petitioners wish to turn on the light of legal knowledge before attempting to walk in the darkened room of present legal uncertainty. This petition was dismissed by the Tenth Circuit evidently based on lack of jurisdiction because a final administrative ruling had not been obtained. From this final dismissal this writ of certiorari is brought.

REASONS FOR GRANTING THIS WRIT

The problems involved are of a National-Scope, and will be of very great importance to every mineral producing State within the United States, as well as to hundreds of people who are engaged in this line of endeavor. The current confusion as described by Professor Bloomenthal of Wyoming University, and by Mr. D. J. McCaulley, formerly of S.E.C. is in the most urgent need of clarification. These two law review articles should be carefully studied by this Honorable Court before rendering its decision.

A proper control of Administrative Agencies is of the utmost importance if a "HITLER-TYPE-RESULT" is to be evaded. Big Government, failures in Courts, and especially in Agencies and individuals who abuse their power, has been at the bottom of every major Nation's downfall throughout history. The facts in this case are a fraud and disgrace of major proportion, and beyond the dignity of what should be expected. Through the willful and planned fraud on the part of S.E.C. the intent and meaning of Congress have been made a farce.

If the 18 questions were fully answered much of the current confusion would disappear. It is easily possible to answer them, and in fact the Petitioners have been given oral answers by S.E.C. representatives. These an-

swers were not within any reasonable interpretation of the law and one could readily tell that S.E.C. was playing "Cat and Mouse with Petitioners". They have no intent of trying to clarify the law for so long as this confusion remains, they can dominate their "victims" unmercifully. Most people can not protect themselves for lack of finances and legal knowledge.

CONCLUSIONS AND FINAL PRAYER FOR RELIEF

It is primarily prayed that the S.E.C. be ordered to give full and complete answers to all 18 questions contained in the Petition for Declaratory Judgment (Tr. 2, all pages), with a final end in mind of trying to eliminate the present great confusion as to the meaning of Sections 3-a (11), and 4 (1) of the S.E.C. Act of 1933.

The issues are of such great importance nationally until it is virtually sure that if the writ is granted that it will again come before this Honorable Court for review, for it is certain that the S.E.C. will never give answers within any reasonable interpretation of the law.

Therefore to evade additional loss of time and expense it is prayed that this Honorable Court handle this matter direct, permitting argument before it as relating to the correctness of the answers given by S.E.C. If this is not considered practical it is prayed that the cause be remanded to the Tenth Circuit directing that Honorable Court to do the same thing.

MR. CHARLES A. MEEKER,
Petitioner,
The Major Oil Development Co.,
By: S. F. MEEKER,
President.

APPENDIX "A"

Order of Submission and Dismissal of Petition

THIRD DAY FEBRUARY TERM,
WEDNESDAY, FEBRUARY 27th, 1963.

Before Honorable Sam G. Bratton, Honorable David T. Lewis, and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard on the motion of respondent, Securities and Exchange Commission, to dismiss the petition for review herein.

On consideration whereof, it is now here ordered that the said motion be and the same is hereby granted and that the petition for review be and the same is hereby dismissed out of this court.

APPENDIX "B"

United States Constitution, Fifth Amendment:

"No person shall be * * * deprived of life, liberty, or property, without due process of law * * *."

28 U.S.C. 1254 (1):

Cases in the Courts of Appeal may be reviewed by the Supreme Court by the following methods:

(1) By writ of Certiorari granted upon Petition of any party to any civil or criminal case before or after rendition of judgment or decree.

28 U.S.C. 2201:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of appropriate pleadings, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Title (5):

Article 1009 (1):

(a) Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof;

(c) Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review;

Article 1032:

The Court of Appeals shall have exclusive jurisdiction to enjoin, set aside, suspend, or to determine the validity of all final administrative orders;

Article 1033:

The venue of any proceeding under this act (AT ' 1031—REVIEW OF ADMINISTRATIVE ORDERS) shall be in the judicial circuit wherein is the residence of the party or any of the parties filing the petition, or wherein such party or any such parties has its principal office * * *.

Securities Act of 1933, As Amended to July 12, 1960

Public No. 22—73rd Congress, H.R. 5480

Exempt Securities:

Section 3-a, Page 4, Paragraph 11:

Any security which is part of an issue offered and sold only to persons resident within a single state or territory, where the issuer of such security is a person resident and doing business within, or, if a corporation, incorporated by and doing business within, such state or territory.

Exempt Transactions:

Section 4:

(1) Transactions by any person other than an issuer, underwriter or dealer; transactions by an issuer not involving a public offering; or transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction),

* * *

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PETITIONERS

v.

UNITED STATES OF AMERICA AND SECURITIES
AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D. C.

PETER A. GAMMERMAN,
General Counsel,
Securities and Exchange Commission,
Washington 25, D. C.

In the Supreme Court of the United States

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MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioners requested the Securities and Exchange Commission to answer 22 hypothetical questions relating to certain statutory exemptions from the registration requirements of the Securities Act of 1933 (App., A 1 - A 5*). The Commission replied that it would not render advisory opinions on hypothetical

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* "App." refers to the appendix to respondents' memorandum in the court of appeals in support of the motion to dismiss. The memorandum and appendix have been filed with this Court.

questions, but that its staff would give its views on the legality of any particular transaction as to which petitioners would submit in writing full details, including the persons and companies involved (App. A 6). Petitioners subsequently again requested the Commission to rule on similar hypothetical questions (App. A 7 - A 11). Upon the Commission's failure to do so, petitioners filed in the Court of Appeals for the Tenth Circuit a petition for a declaratory judgment or, alternatively, for review of the Commission's refusal to answer the questions. On the respondents' motion, the court dismissed the petition (Pet. App A).

This ruling was plainly correct, and there is no occasion for review by this Court. The decision whether to issue a declaratory ruling lies within the sound discretion of the Commission (see Section 5 (d) of the Administrative Procedure Act, 5 U.S.C. 1004(d)); and in declining to answer the hypothetical questions asked by the petitioners the agency neither abused its discretion nor entered any reviewable order. The court of appeals therefore correctly dismissed the petition for review. See Section 9(a) of the Securities Act of 1933, 15 U.S.C. 77i(a), which provides for judicial review only of agency "orders," and Section 10 of the Administrative Procedure Act, 5 U.S.C. 1009, which excepts from the judicial review provisions under that Act any agency action which "is by law committed to agency discretion"; *Crooker* v. *Securities and Exchange Commission*, 161 F. 2d 944, 949 (C.A. 1); *Leighton* v. *Securities and Exchange Commission*, 221 F. 2d 91 (C.A. D.C.),

certiorari denied, 350 U.S. 825; cf. *Third Ave. Ry.* v. *Securities and Exchange Commission*, 85 F. 2d 914, 915 (C.A. 2); *Standard Fruit & S.S. Co.* v. *Midwest Stock Exch.*, 178 F. Supp. 669, 675 (N.D., Ill.).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

PETER A. DAMMANN,
General Counsel,
Securities and Exchange Commission.

MAY, 1963.

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